

**Response**

Applicant: Roger A. Duman

Serial No.: 10/722,240

Filing Date: November 25, 2003

Docket: G180.147.101 / GMI6164

Title: APPARATUS AND METHOD FOR TRANSPORTING CONTAINERS WITHIN A PACKAGING SYSTEM

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**REMARKS**

The following remarks are made in response to the Non-Final Office Action mailed August 30, 2005. In that Office Action, claims 1-9, 11-18, 20-24, 26-29, 31-35, 40-42, 44-46, 48, and 49 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,047,032 ("Carter") in view of U.S. Patent No. 2,496,792 ("Hellberg"). Claims 19, 38, and 39 were rejected under 35 U.S.C. §103(a) as being unpatentable over Carter in view of Hellberg as applied to claims 1 and 26 above, and further in view of U.S. Patent No. 5,938,060 ("Rutland"). Claims 24 and 43 were rejected under 35 U.S.C. §103(a) as being unpatentable over Carter in view of Hellberg as applied to claims 21 and 26 above, and further in view of U.S. Patent No. 3,556,174 ("Gibble"). Claims 36 and 37 were rejected under 35 U.S.C. §103(a) as being unpatentable over Carter in view of Hellberg as applied to claim 33 above, and further in view of U.S. Patent No. 5,641,140 ("Sorenson").

Claims 1-9, 11-29, 31-46, 48, and 49 remain pending in the application and are presented for reconsideration and allowance.

**35 U.S.C. §103 Rejections**

Independent claims 1, 26, and 44 stand rejected under 35 U.S.C. §103 as unpatentable over Carter in view of Hellberg. Claim 1 relates, in part, to a method of transporting containers from a first station to a second station within a container filling system. The method includes loading a container onto a mounting piece of a carrier plate such that the mounting piece frictionally engages an inner surface of a longitudinal recess of the container. The method also includes moving the carrier plate from the first station to the second station, wherein the mounting piece secures the container relative to movement of the carrier plate. For at least the reasons described below, the cited references fail to teach or suggest such limitations.

Carter relates to an apparatus for filling containers where the apparatus includes a rotary table. *Carter* at col. 1, ll. 9-14. As the Office Action notes, Carter does not disclose a mounting piece frictionally engaging an inner surface of a longitudinal recess of a container, as required by the limitations of claim 1. OA at pg. 2. In fact, Carter specifically teaches away from such

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limitations, there would not be a reasonable expectation of success incorporating such limitations, and incorporation of such limitations would defeat the functionality of the Carter apparatus.

In particular, the Office Action refers to the stirrups E of Carter as a “carrier plate” and proffers that one having ordinary skill in the art would be motivated to incorporate the cover/stand 10 of Hellberg into the apparatus of Carter as a “mounting piece.” With reference to Figs. 8 and 9 of Carter, for example, it should be understood that the stirrups E of Carter are substantially flat. In particular, Carter specifically teaches that the bottles “are slid onto and off of them.” *Carter* at col. 6, ll. 18-26. Thus, Carter specifically teaches away from a mounting piece frictionally engaging an inner surface of a longitudinal recess of the container. Restated, Carter teaches flat surfaces for sliding the bottles over the stirrups. The surfaces would no longer be flat and bottles would no longer be able to slide over the surfaces of the stirrups E if the stirrups incorporated the cover/stand 10 of Hellberg.

Furthermore, none of Carter, Hellberg, Sorenson, Rutland, or Gible provides any guidance as to how the base/cover of Hellberg could be incorporated into the apparatus of Carter. As such, there is no reasonable expectation of success in accomplishing such a combination. In fact, such a modification would defeat the functionality of Carter. In particular, so modified, the apparatus of Carter would not allow the bottles to be slid onto and off of the rotating table of Carter using star wheels W, D. In particular, if the base/cover 10 design of Hellberg were incorporated with the stirrups E of Carter, the stirrups E would interfere with the bottles and prevent them from being released from the stirrups E. *Carter* at Figs. 1 & 2; col. 5, l. 67 – col. 6, l. 26 (describing interactions between the rotating table, star wheels W, D, and stirrups E).

As it is improper to combine references where the references teach away from such a combination, and it is improper to make a modification if the proposed modification would render a prior art invention unsatisfactory for its intended purpose, it is believed a *prima facie* case of obviousness has not been established. MPEP §§2141.01, 2143.01.

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Additionally, in order for a reference to be used as prior art under 35 U.S.C. §103, the reference must be analogous art to the application. For at least the reasons described below, Hellberg is non-analogous art to the present invention.

Two factors determine whether a reference is analogous art: (1) whether the art is from the applicant's field of endeavor, regardless of the problem addressed or (2) whether the reference is reasonably pertinent to the particular problem with which the applicant is concerned. MPEP §2141.01.

With respect to the first factor, Hellberg "relates to coffee brewers." *Hellberg* at col. 1, l. 1. In direct contrast, the present application relates to container packaging systems. *Specification* at pg. 1, l. 5. Clearly, coffee brewers are not in the same field of endeavor as container packaging systems, such that the first criterion is not satisfied.

With respect to the second factor, Hellberg "has for its object the provision of an improved device to serve as a combination cover and stand for the upper bowl of a vacuum coffee brewer." In particular, Hellberg is implicitly concerned with supporting bowl 14 on a stationary surface (i.e., where coffee makers are typically placed) "such that tipping of the bowl 14, due to ordinary overbalancing forces acting upon it, is avoided." *Hellberg* at col. 2, ll. 18-20 (emphasis added). In turn, the present application addresses, in part, problems associated with mounting techniques used when transporting containers within a packaging system, such as a system for packaging flowable food products in containers. Thus, Hellberg is not reasonably pertinent to the particular problem with which the applicant is concerned, as Hellberg implicitly relates to supporting stationary coffee maker bowls, and the present application relates to mounting containers for transport in a packaging system. As neither the first nor the second factors are met, Hellberg presents non-analogous art to the present application. For at least such additional reasons, a prima facie obviousness has not been established.

In light of the above clarifications, the grounds for rejecting independent claim 1 are believed fully traversed. Independent claims 26 and 44 relate, in part, to limitations similar to those described above in association with independent claim 1. As such, they are believed patentably distinct from the cited references for at least the reasons described above in

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association with claim 1. Furthermore, dependent claims 2-25, 27-43, and 45-49 depend, in some form, from one of claims 1, 26, and 44. As such, those dependent claims are also believed patentably distinct from the cited references. In sum, the rejection of claims 1-9, 11-29, 31-46, 48, and 49 is believed fully traversed. Withdrawal of the rejection, allowance, and notice to that effect are respectfully requested.

Additionally, the dependent claims can be further distinguished from the cited references. For example, claims 36 and 37 stand rejected under 35 U.S.C. §103 as unpatentable over Carter in view of Hellberg and further in view of Sorenson. Claim 36 relates to a mounting piece including a shoulder extending from a base opposite a carrier plate, the shoulder having a maximum transverse outer dimension less than a maximum transverse outer dimension of the base, the base and the shoulder being rings having co-axial central passages. Claim 37 relates, in part, to the carrier plate forming an aperture, and the mounting piece being assembled to the carrier plate such that the central passages are co-axially aligned with the aperture. For at least the additional reasons provided below, the cited references fail to teach or suggest such limitations.

The Office Action indicates that one having ordinary skill in the art would be motivated to modify the combination of Carter and Hellberg “for greater surface area/friction between the container and carrier plate.” OA at pg. 5. With the tacit understanding that the Office Action is referencing the bowl 30c (shown in Figs. 9 and 10 of Sorenson) as a “mounting piece,” it is unclear how the bowl 30c provides “greater surface area/friction” than the cover/stand 10 of Hellberg. In fact, following a good faith review of the references cited, there is no teaching or suggestion providing such a conclusion as to the function/effect of the structure of the bowl 30c in the prior art. Thus, there would be no motivation to modify the structure of Hellberg.

Additionally, there would be no motivation to combine Sorenson with Carter. In particular, as described above, Carter teaches away from incorporation of the bowl 30c into the apparatus of Carter; there is no reasonable expectation of success in making such a combination; and such a combination would defeat the functionality of Carter. As any one of these reasons renders such combination improper, a prima facie case of obviousness has not been established.

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As such, dependent claims 36 and 37 should be deemed allowable for at least such additional reasons.

**CONCLUSION**

In view of the above, Applicant respectfully submits that pending claims 1-9, 11-29, 31-46, and 48-49 are in form for allowance and are not taught or suggested by the cited references. Therefore, reconsideration and withdrawal of the rejections and allowance of claims 1-49 is respectfully requested.

No fees are required under 37 C.F.R. 1.16(b)(c). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 50-0471.

The Examiner is invited to contact the Applicant's representative at the below-listed telephone numbers to facilitate prosecution of this application.

Any inquiry regarding this Amendment and Response should be directed to Timothy A. Czaja at Telephone No. (612) 573-2004, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

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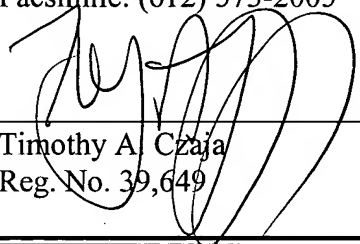
Respectfully submitted,

Roger A. Duman,

By his attorneys,

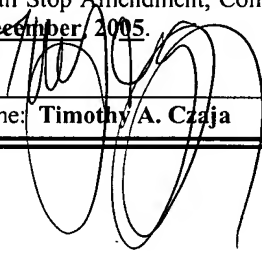
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CERTIFICATE UNDER 37 C.F.R. 1.8:

The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope address to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 7<sup>th</sup> day of December, 2005.

By:   
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Name: Timothy A. Czaja